

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
COUNTY OF JOHNSTON SUPERIOR COURT DIVISION
FILE NO. 10-CRS-56376-77

STATE OF NORTH CAROLINA)	
)	T-R-A-N-S-C-R-I-P-T
VS.)	
)	(Motions)
LOUSHONDA MYERS)	
DEFENDANT.)	
)	

The transcript of the nonjury proceedings taken in the General Court of Justice, Superior Court Division, Johnston County, North Carolina, at the November 7, 2011 Administrative Session before the Honorable Paul Gessner, Judge Presiding.

APPEARANCES:

Mr. Adren Harris
Assistant District Attorney
Prosecutorial District 11-B
Smithfield, North Carolina
On behalf of the State.

Mr. Steven Walker
Attorney at Law
Selma, North Carolina
On behalf of the Defendant.

Tina McNair
Official Court Reporter
Judicial District 11-B
Smithfield, North Carolina

1 MR. HARRIS: Loushonda Myers. Your Honor,
2 the State and defense have agreed to a trial date in
3 this matter for January 9. All pretrial motions shall
4 be heard on January 3rd and shall be filed and certified
5 on opposing counseling on or before December 22nd.

6 MR. WALKER: Your Honor, I've been informed
7 by my client just here that that is too soon of a trial
8 date and she does not consent to that trial date.

9 MR. HARRIS: Your Honor, this case has been
10 on for disposition several times. Prior to this, Ms.
11 Ballard was the retained attorney. It had been on for
12 second setting disposition multiple times, that matter,
13 and then after Ms. Ballard left, it had -- Mr. Walker
14 had taken over and it has been on for disposition. I
15 did a first setting with him, I did a second setting
16 with him. Last admin we let it go again for disposition
17 and here we are again. This matter needs to be set for
18 trial.

19 THE COURT: She was indicted December 13,
20 2010 according to the calendar --

21 MR. HARRIS: Yes, sir.

22 THE COURT: -- that the trial court
23 administrator has provided to me.

24 MR. HARRIS: That is correct, Your Honor.

25 MR. WALKER: And I will say that the reason

1 we set it to this administrative setting, Mr. Harris was
2 not available last administrative setting.

3 MR. HARRIS: It was going to be set for
4 trial anyway if I was available, but I gave Mr. Walker
5 another chance as well as his client. I provided a plea
6 offer. That was rejected. We provided discovery. I
7 know Mr. Walker has motions. That's why I'm asking that
8 it be set for trial. It's been set multiple times.
9 It's time to set a trial date in this matter.

10 THE COURT: Let me look at the proposed
11 pretrial order if you have one. I know you recited the
12 dates, but obviously I didn't write down notes and --

13 MR. HARRIS: May I approach, Your Honor?

14 THE COURT: Yes, please. Do you want to be
15 heard any further on this issue on the scheduling order,
16 Mr. Walker?

17 MR. WALKER: Yes, I do, Your Honor. The
18 reason why -- this is one of the reasons we have these
19 administrative settings is to check to see if all the
20 discovery has been turned over. One of the reasons that
21 we're objecting to this trial date is because we don't
22 feel like we have all the discovery. That's why we
23 filed a Motion to Compel Discovery. It's kind of hard
24 for us to set a motions date and expect us to file
25 motions when we don't know everything in the case.

1 That's why we filed the Motion to Compel Discovery. We
2 filed it last time.

3 Judge Hinnant, I believe it was or Hinton,
4 she looked at it and said she wasn't going to rule on it
5 right then because it had just been filed. Before that,
6 I sent a letter back in September asking for these
7 things and I've basically been told --- never on the
8 record, but I've been told that these things aren't
9 forthcoming even if they don't exist or we're not
10 entitled to them.

11 MR. HARRIS: Therefore, we have a trial and
12 motions date to hear all the motions. We turned over
13 everything in the police file if there's anything
14 outstanding to be heard before the judge on the motions
15 date.

16 THE DEFENDANT: Your Honor, may I be heard
17 on this?

18 THE COURT: Ma'am, you have the right to
19 remain silent. You need to understand that anything you
20 say can and will be used against you. Mr. Walker is
21 standing right beside you and I would not allow you to
22 say anything without first consulting with him about
23 anything that you want to say.

24 THE DEFENDANT: I already have and I would
25 like to speak.

1 THE COURT: Well, let me just caution you
2 that right now I need to review this.

3 Mr. Walker, did you have anything else you
4 wanted to offer at this time?

5 MR. WALKER: Other than what's in the Motion
6 to Compel Discovery, that's things that I do believe
7 that we're entitled to under the discovery statute.

8 THE COURT: I was looking for that
9 specifically and I found where -- it looks like last
10 month Judge Hinton -- I think I just found your Motion
11 to Compel.

12 MR. WALKER: There was a Motion for
13 Discovery of DSS Materials. My understanding DSS has
14 left those with Judge Lock and he's going to perform an
15 in-camera review and give us those things, but that's
16 not part of the Motion to Compel.

17 THE COURT: I found a Motion for Voluntary
18 Discovery, August 10, 2011.

19 MR. WALKER: This would be October 3rd.

20 THE COURT: Motion to Compel. I just found
21 it. Did you want to hear that at this time, the Motion
22 to Compel?

23 MR. WALKER: Yes. I'm asking to hear it. I
24 think it's proper. I understand we have a motions date,
25 but also part of the things we do through an

1 administrative session is work out discovery matters.

2 THE COURT: Before I address the matter
3 raised in the Motion to Compel, did you have any other
4 matters or motions on behalf of the State at this time
5 other than the scheduling order and the motion for --
6 didn't you say there was a Motion for Reciprocal
7 Discovery?

8 MR. HARRIS: I have one, Your Honor. I have
9 not handed it up.

10 THE COURT: Okay. Were there any other
11 matters for the State before I hear from Mr. Walker?

12 MR. HARRIS: No, Your Honor.

13 THE COURT: I'll come back to you in a
14 minute.

15 So I have reviewed your Motion to Compel.
16 You're specifically seeking those things that you have
17 set forth in Number 6A through H, correct?

18 MR. WALKER: Yes, Your Honor. And also I
19 believe in paragraph 7, either a statement that was made
20 by her or at least something on the record. We were
21 given notice in the discovery. That's the way the
22 discovery always comes is that you're given notice of
23 these three things which trigger important time
24 deadlines. Sometimes it's there, sometimes it's not,
25 and so you're having to go through it. I've been put on

1 notice that we're going to have a statement of hers
2 admitted into evidence. If they intend to use it, I
3 don't have a statement in there. So I either want to
4 know whether there's a statement or not, or if there is
5 a statement I want a copy of it.

6 THE COURT: Okay. Well, let's take them one
7 at a time starting at the top, 6A.

8 MR. WALKER: Okay.

9 THE COURT: Discovery indicates that law
10 enforcement sources in South Carolina notified Johnston
11 County Sheriff's Office that two fugitives were residing
12 in the defendant's home. Defendant's entitled to any
13 notes taken in regard to those law enforcement sources
14 in South Carolina. You're specifically seeking notes
15 that may have been taken by the recipient for the
16 Johnston County Sheriff's Office?

17 MR. WALKER: Yes. Notes or indications or
18 -- all we know is this is from the search warrant, says
19 that there are law enforcement sources in South Carolina
20 that are involved. We need to find out were these
21 anonymous sources, were these law enforcement sources,
22 who are the law enforcement sources in South Carolina.
23 If we don't know who the -- I mean, there are tons of
24 law enforcement sources in South Carolina. How are we
25 going to narrow it down to find out who -- to

1 investigate what we need to file on a Motion to Suppress
2 if we can't find out where this information is coming
3 from that's given to the magistrate.

4 THE COURT: You want to be heard?

5 MR. HARRIS: Briefly, Your Honor. As far as
6 A, the State has provided all the information that the
7 Johnston County Sheriff's Department received regarding
8 the search warrant. Therefore, they were given a search
9 warrant to go in and look for the fugitive that was
10 spotted by the marshal service. Other than that, there
11 is no other information that I know that exists
12 regarding South Carolina other than what they
13 communicated for the basis of the search warrant, the
14 Johnston County Sheriff's Department.

15 THE COURT: All right.

16 MR. HARRIS: And Your Honor, just so that
17 we're clear, this is a trafficking cocaine case. That
18 initially began with the marshals coming to the Johnston
19 County Sheriff's Department stating that they had two
20 fugitives from South Carolina, I think for murder or
21 some type of robbery. When they went to the defendant's
22 home, they had a surveillance, just an eye surveillance
23 watching. They saw an individual that matched the
24 physical description of one of the individuals, I
25 believe is her husband, and that she had not seen him in

1 so many years according to her. At that point they then
2 contacted the Johnston County Sheriff's Department
3 saying look, got this fugitive, this person matches the
4 description. He's been on the run, we've been chasing
5 them. The Johnston County Sheriff's Department got the
6 search warrant for that instance, the fugitive.

7 Upon entering, looking for this individual,
8 they see in plain sight, because in the laundry room on
9 top of the washer/dryer was an indoor marijuana growing
10 operation. When they see the drug operation, they go
11 back, based on that, and get another search warrant for
12 drugs and narcotics within the home. When they go back
13 on that second search warrant during the search, they
14 find in the bathroom in a drawer several ounces of
15 cocaine. That's what this stems from. Those are the
16 facts basically in the case, Your Honor. I just want to
17 give the Court an overview.

18 So the information regarding the NCIC report
19 about Tyree and Damien Myers -- I know the Court's going
20 one by one. But again, the only involvement regarding
21 the trafficking in drugs stem from, initially from the
22 search warrant for these fugitives. That was the
23 contact that the Johnston County Sheriff's Department
24 had with the marshals from South Carolina. That was it.

25 THE COURT: Well, they're asking for any

1 records or notes that may have been taken by the
2 sheriff's office regarding the obtaining, I guess, of
3 the first search warrant for the fugitives.

4 MR. HARRIS: And that's what -- we've handed
5 all that over. If you look at the search warrant, it
6 says verbatim what happened. Just like I explained to
7 the Court, they were contacted -- the Johnston County
8 Sheriff's Department didn't know anything about it until
9 they were contacted from the marshal service saying this
10 is the situation we have. We need your assistance or
11 what have you. All notes that were taken, the report,
12 I've provided all of that to defense counsel. There is
13 no -- as a matter of fact, I went downstairs yesterday
14 and met with Captain Fish who's in charge of the
15 narcotics unit, who's in charge of the Johnston County
16 Sheriff's Department. I asked him was there anything
17 else regarding the marshal service, any other notes,
18 anything else, any photographs, were they out there
19 taking pictures of the house that you guys received, any
20 video cameras. He says no, there were none. What's in
21 that search warrant and what's in our police report,
22 that's our interaction with them. That's the
23 information we received. That's it.

24 THE COURT: Okay. Are you aware of any NCIC
25 report showing that Damien Myers is a fugitive from

1 justice or just the one for Tyree that was handed over?

2 MR. HARRIS: The only one that we have is
3 the one for Tyree that was handed up.

4 THE COURT: Which was used as a basis for
5 the probable cause of the original search warrant?

6 MR. HARRIS: Exactly. Yes, Your Honor.
7 That's the one that fits the description of the
8 individual they saw. They saw one individual. I
9 believe it was two -- I don't know if they're brothers
10 or not, but that was the one. And based on that, that's
11 why we handed that over because that's what we used for
12 the basis of a search warrant.

13 MR. WALKER: I think the important thing to
14 also note in the overview is they indicated in their
15 search warrant application in the Affidavit that they
16 never lost the surveillance on the house that they kept
17 there, that they surrounded the house. This was --
18 Johnston County Narcotics came to help out on the
19 fugitive catch. It's not a SWAT team or anything like
20 that. It's narcotics agents. They came in and they
21 searched the house and they never find the fugitive and
22 they never lost surveillance.

23 I think that should be noted, that we've got
24 narcotics agents executing a search warrant to find a
25 fugitive and the fugitive is not present in the house.

1 That's why these things are important, to be able to
2 have these things and to know these things. Were they
3 really going in there after a fugitive or was this
4 something to get the search warrant to go in there for
5 another reason? We don't have these things. I can't
6 imagine that the sheriff's department would go and do
7 these things without covering their bases. So the next
8 one down is that we don't have the arrest warrants.

9 THE COURT: Well, the arrest warrants should
10 be a South Carolina process or some other process. They
11 would be -- the NCIC, I think, would then entitle that,
12 but the hit on the NCIC paperwork, if I'm not mistaken,
13 is what would entitle them to arrest them on the
14 Fugitive from Justice Warrant, which is issued in North
15 Carolina.

16 MR. WALKER: And I would like a copy of
17 that.

18 THE COURT: Well, it's in the Clerk's Office
19 I'm sure.

20 MR. WALKER: I don't -- my thing is one of
21 the requirements to go in for a search warrant for
22 arrest is that you're going to serve the arrest warrant
23 and arrest the person when you go in there. I would
24 think that the sheriff's department would have had that
25 in their possession, had that in their file. I've

1 turned over their whole file, I don't have that. Now,
2 it may be on file in the Clerk's Office and I may be
3 able to get there, but --

4 THE COURT: If he was in fact arrested.

5 MR. WALKER: Or if he was going to be
6 arrested. I would think that they would need to at
7 least verify that they were going in to arrest somebody
8 if they had a warrant to do that.

9 THE COURT: I think he's already addressed
10 the concerns that you've raised in D about the
11 photographs, audio or video recordings. It sounds as
12 though there are not or at least that's what I picked up
13 a few minutes ago. Are you aware of any audio
14 recordings or any other information involving her phone?

15 MR. HARRIS: No, Your Honor. The only thing
16 that -- when I spoke with Captain Fish and when the
17 marshals were getting ready to do their entry or
18 whatever, Captain Fish had a conversation with the
19 defendant saying, you know, you need to watch out or
20 whatever. The defendant took her phone and was, I guess
21 trying to record what was going on, and he just said you
22 need to make sure that you're a safe distance when these
23 guys are coming into the home. That phone, as I
24 indicated to Mr. Walker, is in evidence. Any time he
25 wants to make an appointment to go down there and look

1 at her phone, review it or whatever, I told him that
2 he's more than welcome to do that.

3 MR. WALKER: I don't believe that's what I'm
4 asking for in that section. The defendant has reason to
5 believe there are cellular phone records that may have
6 been accessed and also has reason to believe the
7 cellular phone used may have been under surveillance.
8 I'm not talking about her taking a video. I'm talking
9 about --

10 THE COURT: Did they get a track and trace?

11 MR. HARRIS: No, your Honor.

12 THE COURT: Or one of those orders to find
13 out where she's going or --

14 MR. HARRIS: No, Your Honor.

15 THE COURT: Three-judge panel convened so
16 they could eavesdrop on her telephone conversation.
17 Anything of that nature?

18 MR. HARRIS: No, Your Honor.

19 MR. WALKER: The people she talked to on the
20 phone got stopped right after that.

21 THE COURT: Her vehicle has been removed by
22 the sheriff's office. She's entitled to any notes or
23 reports held in the custody of the vehicle. Is that not
24 in his field notes or report?

25 MR. WALKER: You don't find anything about

1 what happened with the car.

2 MR. HARRIS: Your Honor, the vehicle was
3 taken into custody. There is an evidence log of the
4 vehicle.

5 THE COURT: So it's being held as evidence?

6 MR. HARRIS: It was released. As a matter
7 of fact, when Ms. Ballard represented her, the vehicle
8 had been released some time ago, like probably two or
9 three months after she was arrested. She has the
10 vehicle.

11 THE COURT: What are you looking for?

12 MR. WALKER: I'm looking for -- I mean,
13 basically, if he took notes, if he had anything about
14 what he did with that and that was in his file, we're
15 entitled to it because under the statute we're entitled
16 to everything. It may be that there's nothing there,
17 but there may be something there.

18 THE COURT: If it exists, you got to give it
19 to them otherwise --

20 MR. HARRIS: I understand, Your Honor.

21 THE COURT: All right. Are you aware of any
22 other law enforcement agencies or the marshals of the
23 Wake County Sheriff's Office having any notes of their
24 participation involving this activity or this incident?

25 MR. HARRIS: No, sir, Your Honor.

1 MR. WALKER: I would just be shocked to find
2 -- I didn't find any -- see anything in the discovery
3 files where any discovery request had been made of the
4 U.S. Marshals or to ask them if they had anything. I
5 just can't imagine that they'd have a couple of U.S.
6 Marshals coming in and if they take no notes and leave
7 no tracks of anything of what they're doing in this
8 case. All this started with the U.S. Marshals. I don't
9 think we can get around the discovery statutes by just
10 bringing in a federal agency and let them start doing it
11 and then say, oh, you're not entitled to that because we
12 can't make them give the stuff over.

13 THE COURT: If it exists, I'm going to
14 require the State to turn it over anyway.

15 MR. HARRIS: Very well, Your Honor.

16 THE COURT: I guess in number 7, you're
17 asking for full disclosure of any and all evidence that
18 they have in their possession that they intend to use?

19 MR. WALKER: Our local rules have a form
20 that you use when you're given discovery that you got
21 check boxes to give notice of evidence you intend to
22 use. These are the things that come under -- I don't
23 know if I've got the statute listed there, but the
24 things that give you -- basically, you got ten days to
25 file a Motion to Suppress for these things. Instead of

1 using a check box anymore, basically what I get in
2 discovery is we intend to use all evidence that we have
3 including, but not limited to, these three things.

4 So we don't know if -- to me, that's not
5 notice under the statute, to say well, if we got it,
6 we're going to use it. It's the same as me filing to
7 move to suppress all the evidence and that's it. I got
8 a basis for it. That's just not a specific enough
9 notice. It kind of destroys the notice statute. So I'm
10 asking that if any of those things exist that I be given
11 a copy of them. If not, then they go on the record that
12 they don't intend to use those things because they don't
13 exist and it changes my preparation.

14 THE COURT: You want to be heard?

15 MR. HARRIS: Your Honor, only that language
16 tracks exactly the statute.

17 THE COURT: And you're required to continue
18 to supplement your discovery under the statute.

19 MR. HARRIS: Yes.

20 THE COURT: Comply with all forms of the
21 statute.

22 MR. HARRIS: That is correct.

23 MR. WALKER: To put me on notice that
24 they're going to use something that doesn't exist,
25 really goes -- that's not what the notice statute is

1 for. The notice statute says that I have notice that
2 something exists and it's going to be used. But just
3 saying we're using everything in existence, including
4 these things, doesn't survive notice under that statute.

5 THE COURT: But you have a list of
6 everything they have?

7 MR. WALKER: I have what they've given me in
8 discovery. But as you say, I didn't feel like that was
9 everything or I wouldn't have filed the Motion to
10 Compel.

11 THE COURT: It better be everything.

12 MR. WALKER: I hope so. I really can't see
13 that it's everything. The statute says that we're
14 entitled to the complete files of all law enforcement
15 agencies involved in the investigation. I don't have a
16 single, solitary thing from the U.S. Marshals. My
17 client -- and I do need to amend, if I may, orally amend
18 my motion.

19 The discovery indicates that the Wake County
20 Sheriff's Office was involved. That is not indicated in
21 the discovery, I'm sorry, but my client recalls the Wake
22 County Sheriff's Office being involved, that they were
23 there, but I have nothing from the Wake County Sheriff's
24 Office either. Those are both law enforcement agencies
25 and I'm entitled to their complete file, but I don't

1 have it.

2 THE COURT: I'm going to ask if you would
3 ascertain if there's anything available from the U.S.
4 Marshal Services or from the Wake County Sheriff's
5 Office. And if there is, you're required to disclose it
6 or turn it all over related to this incident.

7 MR. HARRIS: Very well, Your Honor.

8 THE COURT: Anything else, Mr. Walker?

9 MR. WALKER: The only thing is is about the
10 -- if there was a statement made by her, that we don't
11 have that. We've been put on notice of that. I believe
12 off the record it's been indicated that there was no
13 statement, but I would like to get that on the record in
14 case that pops up at trial.

15 THE COURT: Are you aware of any statement
16 she's made?

17 MR. HARRIS: Your Honor, the State is not
18 aware of any statements the defendant has made.

19 THE COURT: Okay. With the exception of
20 ascertaining Wake County Sheriff's Office and the U.S.
21 Marshal Service, the Motion to Compel is denied. The
22 State is required to provide anything that they have in
23 their possession, custody or control or anything that
24 they can require -- they're required to turn it over.

25 MR. WALKER: So you're granting the motion

1 in part and denying it in part?

2 THE COURT: Correct.

3 MR. WALKER: Okay. Now, Your Honor, before
4 you finish your ruling, my client has asked me multiple
5 times if she can speak to the Court. I advised her that
6 that is generally not -- well, you've advised her of her
7 rights. If you want to give her the opportunity to
8 speak, I'm going to let her have the opportunity to
9 speak. I have, of course, advised her against it and
10 even advised her of the right to remain silent. If she
11 wishes to speak, I'm not going to stop her.

12 THE COURT: Ms. Myers, do you understand you
13 have the right to remain silent?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Do you understand that anything
16 you say can and will be used against you?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: Do you understand that Mr.
19 Walker is standing right next to you and has the
20 opportunity to speak on your behalf?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: Have you talked to him about
23 whatever it is you want to say to me?

24 THE DEFENDANT: Yes, I have.

25 THE COURT: How old are you?

1 THE DEFENDANT: I'm 33.

2 THE COURT: How far did you get in school?

3 THE DEFENDANT: I'm in college.

4 THE COURT: Can you read and write?

5 THE DEFENDANT: Yes, I can.

6 THE COURT: Are you now under the influence
7 of alcohol, drugs, narcotics, medicines, pills or any
8 other intoxicant?

9 THE DEFENDANT: No.

10 THE COURT: Has anybody promised you or
11 threatened you in any way to have you give up your right
12 to remain silent and come in here and ask questions or
13 make statement here in open court?

14 THE DEFENDANT: No.

15 THE COURT: And the decision to make these
16 comments or statements that you want to make, is that a
17 decision that you and you alone have made?

18 THE Defendant: Yes, I have.

19 THE COURT: And have you talked to Mr.
20 Walker about the possible impact or effect that these
21 in-court statements could have on you?

22 THE Defendant: Yes.

23 THE COURT: And even after talking with him
24 about that, and I'm not asking about what he said or
25 what you said to him, that's your business and not

1 appropriate for me to go there, but the decision that
2 you're making to make these statements came after you
3 have talked with your lawyer about this?

4 THE DEFENDANT: Yes.

5 THE COURT: If there's something that you
6 feel like you must ask me, you may go ahead. Before I
7 do that, I'm going to say that you have knowingly,
8 intelligently, freely and voluntarily waived your rights
9 with respect to making a statement here in open court
10 and understand your rights regarding the right to remain
11 silent.

12 THE DEFENDANT: Uh-huh. The first thing
13 that I would like to bring to the Court's attention is
14 that Mr. Harris stated my previous attorney, Ms. Aletha
15 Ballard, that it has been going on with her prior to Mr.
16 Walker. I would like to present evidence to the Court
17 that for almost a year I have been asking Ms. Ballard to
18 obtain additional discovery information. I've also
19 asked her to inform Mr. Harris that he is -- under the
20 Sixth Amendment of the Constitution, I have a right to
21 confront my accuser. Also under the Fourteenth
22 Amendment, I am entitled to due process, which means
23 that I am entitled to every piece of information that
24 the prosecution has against me and the prosecution has a
25 duty to fully investigate what's going on.

1 Mr. Harris mentioned that the marshals came
2 to my home stating that these people were wanted for
3 murder and robbery. In the affidavit it states they
4 were wanted for robbery and narcotics. However, as I
5 told my attorney, Mr. Walker, they were there in my home
6 searching for other things.

7 Mr. Harris also stated that the U.S.
8 Marshals contacted the Johnston County Sheriff's
9 Department and asked them to assist. The marshal has
10 the authority to arrest anyone wherever they find them.
11 On the date that they came to my home, they had an
12 unlawful presence at my home. They did not have a
13 search warrant for the individuals -- an arrest warrant,
14 excuse me, for the individuals that they were seeking.
15 They did not confirm the NCIC report.

16 As a matter of fact, the NCIC that I have
17 for Mr. Tyree Myers, to the bottom, states that there is
18 no NCIC warrant in the database. Then Mr. Harris also
19 mentioned that I could of -- that the things that he
20 gave Mr. Walker is in its entirety. It's not in it's
21 entirety because Ms. Ballard never filed a formal motion
22 for discovery. And without her ever filing a formal
23 motion for discovery, there's no way she could ever put
24 in a motion to compel discovery in which she promised me
25 in numerous e-mails that she would put in a motion to

1 compel discovery.

2 Mr. Harris also mentioned that the Johnston
3 County Sheriff's Department saw a grow operation in my
4 laundry room. But what he's failing to mention is that
5 when the U.S. Marshals came to my home, Mr. (Cognic,)
6 who's the head of the marshal's team, actually went to
7 the marshal's office and told them all this ridiculous
8 information, telling them that they had surveillance
9 down on my home. However, Mr. Harris is saying that
10 there was no surveillance. But yet in my affidavit, the
11 search warrant affidavit and also the affidavit of Det.
12 Allen Creech, they're saying that surveillance was done
13 on the home, but none of this has been produced in my
14 discovery. What they did when they came to my home was
15 a violation of my Fourth Amendment right of unlawful
16 search and seizure.

17 THE COURT: Well, those are all arguments
18 that are relevant and may be brought up at a later point
19 in time.

20 THE DEFENDANT: Without my complete
21 discovery there's no way that I can properly defend
22 myself --

23 THE COURT: I understand that.

24 THE DEFENDANT: -- with a motions date of
25 January 3rd.

1 THE COURT: And that's what Mr. Walker has
2 been advocating for this morning on your behalf and
3 that's what we have addressed with the DA's Office, with
4 Mr. Harris, and he is required to provide everything
5 that he has in his custody and control. I've required
6 him to ascertain if there's anything else available from
7 the U.S. Marshal Service and from the Wake County
8 Sheriff's Office. And I'm going to ask Mr. Harris to
9 prepare an order that reflects the Motion to Compel
10 rulings that I made today. I am going to sign the
11 scheduling order and order that the matter be set on the
12 trial calendar for January 9. Pretrial motions are to
13 be heard on January 3 and December 22 is the date for
14 all motions to be filed by. You are free to go.

15 MR. WALKER: We, of course, Your Honor,
16 reserve the right to make a motion for a continuance if
17 we don't have the discovery in time.

18 THE COURT: Absolutely.

19 MR. HARRIS: Your Honor, may I approach with
20 the Order of Reciprocal Discovery. It tracks the
21 statute.

22 MR. WALKER: As far as it tracks the
23 statute, I'm fine with it, Your Honor.

24 THE COURT: All right. Thank you.
25

CERTIFICATE

STATE OF NORTH CAROLINA)
COUNTY OF JOHNSTON)

I, Tina McNair, the officer before whom the foregoing proceeding was taken, do hereby certify that said hearing is a true and verbatim transcript of said proceeding.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of this action.

This the 19th day of December, 2011.

Tina McNair
Official Court Reporter
Judicial District 11B.
Smithfield, NC.
919.209.5512 - Work